

**MINUTES
OF THE REGULAR MEETING OF THE
EDINA CITY COUNCIL
HELD AT CITY HALL
FEBRUARY 3, 2009
7:06 P.M.**

ROLLCALL Answering rollcall were Members Bennett, Brindle, Housh, Swenson and Mayor Hovland.

CONSENT AGENDA ITEMS APPROVED Motion made by Member Brindle and seconded by Member Housh approving the Council Consent Agenda with the exception of Item V.D.2., Set Hearing Dates for Planning Items, Conditional Use Permit, Edina School District, 5701 Normandale Road, Construct New Maintenance Building.

Rollcall:

Ayes: Bennett, Brindle, Housh, Swenson, Hovland

Motion carried.

***MINUTES - REGULAR MEETING OF JANUARY 20, 2009, AND TOWN HALL MEETING OF JANUARY 27, 2009, APPROVED** Motion made by Member Brindle and seconded by Member Housh approving the minutes of the Regular Meeting of January 20, 2009, and Town Hall Meeting of January 27, 2009.

Motion carried on rollcall vote – five ayes.

RESOLUTION NO. 2008-18 ADOPTED ORDERING IMPROVEMENT NO. S-101 – FRANCE AVENUE SOUTH SIDEWALK Affidavits of Notice presented and ordered placed on file.

Assistant Engineer Presentation

Assistant Engineer Sullivan presented Public Improvement No. S-101, a petitioned request to install a sidewalk on the west side of France Avenue from 48th Street to Sunnyside Road. He stated a petition containing 43 residents' signatures (40 residents not living adjacent to the project) had been received. Mr. Sullivan said following a public informational meeting, another petition was received from 44 residents, of whom 14 were abutting property owners, not in favor of the sidewalk. Mr. Sullivan presented details of the project, noting it would complete a missing segment of sidewalk that had been identified in the Comprehensive Plan update. He advised that questions raised during the public informational meetings dealt with snow removal and storage, the number of trees to be removed, fences, retaining walls, landscaping, and the number of utility poles that would be relocated to fit the sidewalk in the limited amount of right-of-way. Mr. Sullivan stated temporary construction easements would be needed toward the south end of the project to construct the retaining wall. He displayed pictures of the project area including the wood fence and volunteer trees in the 4700 block of France Avenue. Mr. Sullivan presented the cost breakdown for this \$300,000 project and said the financing would come from the City's MSA funds.

Mr. Sullivan answered the Council's questions: explaining snow would be hauled from this site because there was not adequate right-of-way for snow storage, noting most of the wooden fence in the 4700 block would not be impacted, that a three to four lot section would require guardrail replacement, the City would be obligated to maintain fencing located on City easements, the retaining wall/fence combination would be designed to absorb energy to provide backyard safety, and the new fence would be located on top of a three to four foot retaining wall. It was noted that any residents could submit a petition if they felt a need existed within the City of Edina. City Engineer/Public Works Director Houle advised that in 2003, the City did a study of MSA sidewalks to identify missing links but the subject section of France Avenue was not caught. However, when the Comprehensive Plan was updated, the segment was added. Mr. Houle said the City did not have a priority list of MSA sidewalks, but staff typically initiated sidewalk projects in conjunction with road reconstruction projects. Mr. Houle explained that Edina received \$1.1 million of State

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Aid for construction projects and about \$250,000 was used toward maintenance projects. If not used for this project, the funds could be used for other projects.

Mayor Hovland opened the public hearing at 7:27 p.m.

Public Testimony

Mary Jo Aiken, 4548 France Avenue S., encouraged the Council to approve the sidewalk project, chiefly for pedestrian safety.

Michael Casserly, 4701 Meadow Road, did not support the project. Mr. Casserly said only three of original petitioners were from the abutting area, cited environmental concerns and stated a sidewalk was available on the east side.

Fred Kraft, 4604 France Avenue S., stated he had originally signed the petition in support, but now withdrew his support because there was a sidewalk on the east side of France Avenue.

Conrad Razidlo, 4622 France Avenue S., opposed the project because persons could cross France Avenue at a semaphore and use the east side sidewalk.

Jeremiah Mostrom, 4544 France Avenue S., supported the sidewalk to increase safety of pedestrians along France Avenue.

Kelly Mostrom, 4544 France Avenue S., supported the sidewalk to improve safety and noted she was a bus rider who had experienced difficulty accessing bus stops on the west side of France.

Dick Brozic, 4608 France Avenue S., questioned impact to the wooded area and sound wall and indicated he did not support the sidewalk.

Gwen Martin, 4709 Meadow Road, stated her opposition to the sidewalk, which would not lower traffic levels, and suggested the installation of a crosswalk option at 47th Street and France Avenue.

Kathy Schmid, 4711 Meadow Road, opposed the sidewalk and read a statement listing her concerns.

Jan Ferrell, 4704 West 70th Street, did not support the sidewalk and questioned why State Aid funds should pay for 100% of a sidewalk project along a County Road.

Richard Cook, 4360 France Avenue S., Unit #7, supported the sidewalk for community walkability, enhanced safety of bus riders and beautification.

Keith Harmon, 4703 Meadow Road, opposed the sidewalk, predicting that people will still need to cross France Avenue and will prefer the sidewalk on the east side.

Heather Isaacs, 4640 France Avenue S., Apt. #1, asked where the utility poles would be relocated.

Roberta Castellano, 4854 France Avenue S., believed the issue of sidewalk placement should be addressed during road reconstruction projects.

Susan Wahman, 4715 Meadow Road, stated she was very opposed to the sidewalk.

Karen Wille, 4701 Meadow Road, opposed the sidewalk.

Member Housh made a motion, seconded by Member Swenson, to close the public hearing.

Ayes: Bennett, Brindle, Housh, Swenson, Hovland
Motion carried.

Mr. Sullivan explained the utility poles would be relocated to the right-of-way line, the City could request the utility company remove duplicate and abandoned utility poles, and the 4600 France Avenue brick and block wall section would remain with the sidewalk abutting it. Mr. Houle advised that State Aid rules allowed use of these funds for sidewalks on County roadway systems. He explained that bollards had been used along areas of curvature but would not be needed in the eight-foot right-of-way area. Mr. Sullivan described the hardscape to be used, noting the stone wall would be constructed of large rough-faced landscape block with the decorative side facing the residents' property.

Responding to the question whether the project was necessary, cost effective, and feasible, Mr. Houle explained the 2008 Comprehensive Plan update addressed Edina's overall Sidewalk System, and the France Avenue segment was identified as a "missing link." He presented the Capital Improvement Plan's list of projects to 2017 with projected costs, noting it was the City Council's discretion to determine whether the project was necessary.

Mr. Sullivan addressed the resident's suggestion for a crosswalk advising Edina's current Crosswalk Policy would not recommend a crossing except at signalized locations. He explained that cobra-style streetlights were located at major intersections and several were mid-block, providing basic background lighting. Lights located closer to the ground would be needed for pedestrian safety lighting. Mr. Sullivan clarified rough boundaries were drawn around business district zones to determine the walking shed and; in this case, it overlapped into a residential area.

The Council discussed: the need to assure safety for pedestrians and those who need an extra measure of safety, such as when debarking from a bus, that trees within the rights-of-way would be removed, but not other trees on residents' property, there would be no impact to the fence mentioned by Ms. Wille, and replacing trees would not qualify under State Aid rules for cost participation.

Member Housh stated he would not support this project due to cost; an alternative sidewalk existing on the other side of France Avenue, and strong opposition by residents abutting the project. The majority of the Council spoke in support of the project because the City had an obligation to maintain public health and provide ease of access. The proposed section would: complete a network of sidewalks, linking linked two business districts, enhance safety for pedestrians and persons who get off the bus in the subject area, would beautify the neighborhood, and would serve the larger community.

Member Swenson introduced Resolution No. 2009-18, Ordering Improvement No. S-101, France Avenue Sidewalk and Authorizing Plans and Specifications to be Completed and Bids Taken. Member Bennett seconded the motion.

Rollcall:

Ayes: Bennett, Brindle, Swenson, Hovland

Nays: Housh

Motion carried.

RESOLUTION NO. 2009-19 ADOPTED APPROVING FINAL SITE PLAN – ALOFT HOTEL/ WAYZATA PROPERTIES, 4900 VIKING DRIVE Affidavits of Notice presented and ordered placed on file.

Planner Presentation

Planner Teague presented the final site and grading plans for the Aloft Hotel, 4900 Viking Drive, Phase I of the Gateway Development Project. He advised Edina Code required 755 parking stalls, so a variance was requested to allow 655 stalls. A parking study concluded that based on

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uses of hotel and office, there would be enough parking due to shared uses and staggered peak times. The Planning Commission and Zoning Board of Appeals supported the project. Staff appealed the Zoning Board's action so the Council could take action on the entire project.

The Council discussed the 100-stall variance request and asked the proponent to present the building materials and color palette.

Proponent Presentation

Chris Hickok, Wayzata Properties, introduced the development team and managing partner and stated the project design had been held consistent since preliminary approvals.

Mark Swenson, architect of project, displayed elevations and described building materials for the "hip and modern" façade as being similar but using brighter colored materials than the Minneapolis Aloft Hotel. Mr. Swenson noted the LED lighting feature on the front elevation, swoop of the canopy on the top and narrow footprint orientated toward the residential area.

The Council expressed concern with the color variance between façade pictures provided and building materials presented by the proponent. Mr. Swenson explained the building material and colors could vary from location to location. The Minneapolis Aloft Hotel used dark gray metal against light gray metal in consideration of neighboring buildings. The Edina Aloft Hotel façade would use a warm terracotta color; soft yellow colored panels, and soft blue LED strip lights.

Mayor Hovland opened the public hearing at 9:00 p.m.

Public Testimony

Arrie Larsen Manti, National Chamber of Commerce, spoke in support on the project on behalf of the Chamber of Commerce. She noted the Edina Chamber would office within the complex.

Member Swenson made a motion, seconded by Member Bennett, to close the public hearing.

Ayes: Bennett, Brindle, Housh, Swenson, Hovland

Motion carried.

Member Housh disclosed that his employer did business with Mortenson Development, but he did not believe it constituted a conflict. City Attorney Knutson agreed that was not a disqualifying conflict.

Member Swenson introduced Resolution No. 2009-19 Approving a Final Site Plan with a Parking Stall Variance for Phase 1 of Gateway, with the following findings:

1. With the exception of the variance, the proposal would meet the required standards and ordinances for a Final Development Plan.
2. The Final Development Plan was consistent with the approved Preliminary Development Plan.
3. The proposal meets the required standards for a variance because:
 - a. The proposed use was reasonable. It provided a reasonable on-site parking for the hotel and existing office buildings, based on the parking study that was performed by Kimley-Horn.
 - b. The proposed hotel was Phase 1 of an Overall Development Plan for the site that includes new office buildings and parking ramps.

Approval of the Final Development Plan was subject to the following conditions:

1. The site must be developed and maintained in conformance with the following plans, unless modified by the conditions below:
 - Site plan date stamped October 27, 2008
 - Building elevations date stamped October 27, 2008
 - Grading and drainage plan date stamped October 27, 2008

- Utility plan date stamped October 27, 2008
 - Landscape plan date stamped October 27, 2008
 - Lighting plan date stamped October 27, 2008
 - Building materials and colors must be the same as on the materials board presented to the City Council on February 3, 2009
2. Submit a copy of the Nine Mile Creek Watershed District Permit. The City may require revisions to the approved plans to meet the District's requirements.
 3. Per Section 850.10 Subd. 3.B of the City's Zoning Ordinance, a letter of credit, performance bond or cash deposit must be submitted in the amount equal to 150% of the proposed landscaping prior to issuance of a certificate of occupancy for the building.
 4. Compliance with all conditions listed by the City Engineer in his memo dated November 18, 2008.
 5. Compliance with all conditions required by the Transportation Commission.
 6. All Phase 1 public improvements, per the approved Development Agreement, must be installed prior to issuance of a certificate of occupancy.

Member Brindle seconded the motion.

Rollcall:

Ayes: Bennett, Brindle, Housh, Swenson, Hovland

Motion carried.

RESOLUTION NO. 2009-24 ADOPTED DENYING APPEAL OF ADMINISTRATIVE PENALTY – CHUCK E. CHEESE – SALE OF ALCOHOL TO UNDERAGE PERSON – RESOLUTION 2009-24 Affidavits of Notice presented and ordered placed on file.

Deputy Chief Presentation

Deputy Chief Long described the liquor compliance violation that occurred at Chuck E. Cheese on December 17, 2008, and recommendation for a \$1,000 fine and suspension of the Chuck E. Cheese liquor license for three days, since this was a second violation within 24 months. It was noted that on February 25, 2008, a letter was mailed to all public establishments that serve alcohol informing of upcoming alcohol compliance inspections. In response to Council's questions, Deputy Chief Long explained that a Minnesota driver's license for someone younger than 21 clearly states "under 21" above the photo along with the date the holder will turn 21 years of age.

Proponent Presentation

Rick Asher, Manager at Chuck E. Cheese, 7505 France Avenue, stated he takes this matter very seriously. Mr. Asher described what he believed happened when the two Edina police officers and an underage decoy ordered three beers on December 17, 2008. Mr. Asher stated he took this very seriously and that Chuck E. Cheese had scheduled training this Thursday.

Jim Ventura, attorney representing Mr. Asher, stated their position that it would be unfair to impose a three-day suspension of the license. Chuck E. Cheese had a corporate policy to limit sales to two beers per person, not serving to the point of intoxication. Mr. Ventura stated beer sales were not a main part of their business, estimating Chuck E. Cheese served fewer than 25 beers a week. He asserted the Police Department had not followed their policy because a copy the identifying information of the underage decoy had not been provided to him along with the police report. Mr. Ventura asserted the Police report was lacking, did not follow the City's policy, and asked if it had been demonstrated there was a violation. Mr. Ventura stated he believed that suspension of their license was a harsh policy because it would affect Chuck E. Cheese licensing applications in other cities.

Mayor Hovland stated a violation had been demonstrated to the Police Department and provided Mr. Ventura with his copy of the decoy's picture and driver's license. Deputy Chief Long advised the decoy's photo had been taken the night of the compliance checks, and he was unsure why Mr. Ventura did not receive a copy because copies were attached to the report.

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Mayor Hovland opened the public hearing at 9:18 p.m.

Public Testimony

No one appeared.

Member Housh made a motion, seconded by Member Brindle, to close the public hearing.

Ayes: Bennett, Brindle, Housh, Swenson, Hovland

Motion carried.

Member Housh introduced Resolution No. 2009-24 Denying Appeal on Selling or Furnishing Alcohol to an Underage Person. Member Bennett seconded the motion. The Council discussed: the need to assure liquor laws were followed through compliance checks, the advance notice given to licensees informing them checks would be conducted, suggesting to licensees it might be helpful to post the youngest date of birth that could be served, and the proper process was followed for Chuck E Cheese leaving no reason to cancel the administrative penalty.

Rollcall:

Ayes: Bennett, Brindle, Housh, Swenson, Hovland

Motion carried.

PUBLIC COMMENT

No one appeared.

***AWARD OF BID – AMBULANCE REMOUNT – FIRE DEPARTMENT Motion made by Member Brindle and seconded by Member Housh awarding the bid for Type III Ambulance Remount, Fire Department, to the recommended low bidder, North Central Ambulance at \$105,990.37.**

Motion carried on rollcall vote – five ayes.

***AWARD OF BID – 2009 CHEVROLET SILVERADO PICK-UP – BRAEMAR ARENA Motion made by Member Brindle and seconded by Member Housh awarding the bid for 2009 Chevrolet Silverado One Ton Pick-Up Truck, Braemar Arena, to the recommended low bidder, Car/Truck City (State of Minnesota Contract #440137) at \$21,580.**

Motion carried on rollcall vote – five ayes.

***AWARD OF BID – REPLACEMENT OF PAMELA PARK PLAYGROUND EQUIPMENT Motion made by Member Brindle and seconded by Member Housh awarding the bid for replacement of Pamela Park playground equipment to the recommended low bidder, Power Play LT Farmington, Inc. at \$150,000.**

Motion carried on rollcall vote – five ayes.

RECEIVED WEST 70TH STREET STUDY ADVISORY COMMITTEE PRESENTATION Geoff Workinger, Transportation Commission Chair, introduced members of the Study Advisory Committee present and provided a brief summary of the West 70th Street study which addressed traffic volume, safety, difficulty of driveway access and turning movements, and speed of travel.

Steve Brown, Study Advisory Commission Chair, outlined the efforts made to gather public input, stating he believed the process had been open, and findings collaborative. He presented the Committee's recommendation to break the proposed improvements into three phases and described the 12 work tasks. Mr. Brown explained if the Council approved the recommended course of action that each phase be evaluated as implemented.

Mayor Hovland thanked all who served on this project for a job well done.

RESOLUTION NO. 2009-20 APPROVED ACCEPTING VARIOUS DONATIONS Mayor Hovland explained that in order to comply with State Statutes; all donations to the City must be adopted by Resolution and approved by four favorable votes of the Council accepting the donations.

Member Bennett introduced Resolution No. 2009-20 accepting various donations. Member Housh seconded the motion.

Rollcall:

Ayes: Bennett, Brindle, Housh, Swenson, Hovland

Motion carried.

ORDINANCE NO. 2009-3 ADOPTED – AMENDING SECTION 1020 FALSE ALARMS Deputy Chief Long advised this amendment would address the fine schedule relating to false alarms to which the Police Department responded. **Member Swenson made a motion, seconded by Member Housh, to grant First and waive Second Reading adopting Ordinance No. 2009-03, Amending Section 1020 False Alarms.**

Rollcall:

Ayes: Bennett, Brindle, Housh, Swenson, Hovland

Motion carried.

***HEARING DATE OF FEBRUARY 17, 2009 SET FOR APPEAL OF VARIANCE DENIAL 6120 BROOKVIEW AVENUE** Motion made by Member Brindle and seconded by Member Housh to set February 17, 2009, as the hearing date for Appeal of Variance Denial, 6120 Brookview Avenue, JMS Custom Homes.

Motion carried on rollcall vote – five ayes.

HEARING DATE OF MARCH 3, 2009 FOR CONDITIONAL USE PERMIT EDINA SCHOOL DISTRICT MAINTENANCE BUILDING Member Housh made a motion, seconded by Member Swenson, to set March 3, 2009, as the hearing date for Conditional Use Permit, Edina School District, 5701 Normandale Road, Construct a New Maintenance Building.

Ayes: Bennett, Brindle, Housh, Swenson, Hovland

Motion carried.

***RESOLUTION NO. 2009-13 APPROVED – FINDINGS GRANTING VARIANCE 5349 KELLOGG AVENUE** Motion made by Member Brindle and seconded by Member Housh to adopt Resolution No. 2009-13 Findings Granting Variance 5349 Kellogg Avenue.

Motion carried on rollcall vote – five ayes.

***MEMORANDUM OF UNDERSTANDING APPROVED – BLOOMINGTON PUBLIC HEALTH** Motion made by Member Brindle and seconded by Member Housh to approve Memorandum of Understanding, Bloomington Public Health.

Motion carried on rollcall vote – five ayes.

***T-MOBILE ANTENNA APPROVED AT PAMELA PARK** Motion made by Member Brindle and seconded by Member Housh to approve T-Mobile antenna at Pamela Park.

Motion carried on rollcall vote – five ayes.

***CONFIRMATION OF CLAIMS PAID** Motion made by Member Brindle and seconded by Member Housh approving payment of the following claims as shown in detail on the Check Register dated January 22, 2009, and consisting of 26 pages; General Fund \$271,649.93; Communications Fund \$10,352.14; City Hall Debt Service \$2,000.00; PIR Debt Service Fund \$2,000.00; Working Capital Fund \$7,626.94; Art Center Fund \$3,208.57; Golf Dome Fund \$10,793.36; Aquatic Center Fund \$79.10; Golf Course Fund \$13,029.39; Ice Arena Fund \$15,008.95; Edinborough/Centennial Lakes Fund \$12,571.34; Liquor Fund \$132,398.91; Utility Fund \$56,591.10; Storm Sewer Fund \$76.67; PSTF Agency Fund \$716.35; **TOTAL \$538,102.75** and for approval of payment of claims dated January 29, 2009, and consisting

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of 32 pages: General Fund \$201,888.23; CDBG Fund \$19,900.00; Communications Fund \$3,471.38; Working Capital Fund \$292,095.62; Construction Fund \$69,361.20; Art Center Fund \$17,723.18; Golf Dome Fund \$19,103.40; Aquatic Center Fund \$109.87; Golf Course Fund \$3,442.93; Ice Arena Fund \$893.91; Edinborough/Centennial Lakes Fund \$22,253.37; Liquor Fund \$177,624.19; Utility Fund \$287,145.62; Storm Sewer Fund \$30,115.33; PSTF Agency Fund \$29.45; **TOTAL \$1,145,157.68.** Motion carried on rollcall vote – five ayes.

HUMAN RIGHTS AND RELATIONS COMMISSION DISCUSSED Member Brindle advised that the Human Rights and Relations Commission no longer existed due to resignations resulting from attendance requirements, term limits, and resignations. She suggested restructuring to a seven or nine member Commission. The Council discussed the attendance requirement and possible scenarios for restructuring of the Human Rights and Relations Commission. Consensus was reached to delay interviewing candidates for the Human Rights and Relations Commission until it had been determined how the Commission would be restructured, which would be discussed at the February 24, 2009, Study Session.

PUBLIC HEARING TO CONSIDER VACATION OF PORTION OF BELMORE LANE CANCELED Member Swenson made a motion, seconded by Member Bennett, to cancel the February 17, 2009, public hearing for Vacation of a portion Belmore Lane.

Ayes: Bennett, Brindle, Housh, Swenson, Hovland

Motion carried.

There being no further business on the Council Agenda, Mayor Hovland declared the meeting adjourned at 10:30 p.m.

Respectfully submitted,

Debra A. Mangan, City Clerk